In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1006

JOHN F. GRAHAM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In this case petitioner seeks review of the decision of the Court of Claims rejecting his claim as sounding in tort and thus as outside the jurisdiction of the court.

1. Petitioner alleges that in November 1965, he was arrested by the F.B.I. for allegedly mailing threatening communications in violation of 18 U.S.C. 876 (Pet. 3). Later the same day, pursuant to 24 D.C. Code 301 (a), he was committed to D.C. General Hospital for examination. After a hearing in which two D.C. General Hospital psychiatrists testified that he was psychotic, he was committed to St. Elizabeths Hospital, apparently as incompetent to stand trial. He was sub-

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sequently indicted under 18 U.S.C. 876 and was found competent to stand trial. Two months later he was released from St. Elizabeths, arraigned in the United States District Court, and released on his own recognizance. Approximately five months thereafter the United States dismissed the indictment (Pet. 4).

Petitioner filed suit in the Court of Claims, seeking damages of $425,000.00. He alleged that he was unlawfully committed to St. Elizabeths Hospital (Ct. Cl. Pet. 1, para. 2);[1] that his reputation was damaged thereby (Ct. Cl. Pet. 2 para. 4); and that the government had broken its implied contract to provide him with proper care. The Court of Claims dismissed the petition for lack of jurisdiction.

2. The decision of the Court of Claims is correct and further review is not warranted. The Court of Claims has no jurisdiction over tort claims. *Schillinger* v. *United States*, 155 U.S. 163; *Klebe* v. *United States*, 263 U.S. 188; *Hill* v. *United States*, 149 U.S. 593; *German Bank of Memphis* v. *United States*, 148 U.S. 573. Petitioner's claims—false imprisonment, defamation and negligence—are all such claims.[2] The Court of Claims has held that claims alleging illegal and improper confinement in a mental hospital,[3] in-

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[1] "Ct. Cl. Pet." refers to the petition in the Court of Claims, a copy of which we are lodging with the Clerk.

[2] See Prosser, *Law of Torts*, 4th ed. (1971); Chapter 2, sec. 11 (false imprisonment); Chapter 19 (defamation); Chapter 5 (negligence).

[3] *Grayson* v. *United States*, 141 Ct. Cl. 866; *Jarosz* v. *United States*, 179 Ct. Cl. 927.

jury to reputation,[4] and negligent treatment in a public hospital,[5] are all tort claims and as such are beyond its jurisdiction.

Petitioner's formulation of one of his claims as involving a breach of the government's implied contract to provide him with proper care in the hospital cannot, in the context of the jurisdictional requirements of the Court of Claims, change the nature of the claim from tort to contract. See *Hill* v. *United States, supra,* 149 U.S. at 598.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1973.

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[4] *Algonac Manufacturing Co.* v. *United States*, 428 F. 2d 1241 (Ct. Cl.); *Minnick* v. *United States*, 177 Ct. Cl. 1098; *Bornhoft* v. *United States*, 137 Ct. Cl. 134.

[5] *Jarosz* v. *United States*, 179 Ct. Cl. 927; *Norcutt* v. *United States*, 60 F. Supp. 226 (Ct. Cl.).

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